NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL B. VASQUEZ, Warden Petitioner, vs. UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, Respondent, DAVID L. MURTISHAW, Real Party in Interest.	No. 93-70426 D.C. No. CV-F-91-508-OWW-P ORDER DATED: May 20, 1993

Petition for Writ of Mandamus to the
United States District Court for the
Eastern District of California
Oliver W. Wanger, District Judge, Presiding

BEFORE: BRUNETTI, FERNANDEZ, and
KLEINFELD, Circuit Judges

Petitioner seeks a writ of mandamus directing the respondent Court to vacate its order denying petitioner's motion to

dismiss claims 2, 5, 9, 10B, 19, and 20 of Murtishaw's first amended petition for writ of habeas corpus, and to enter an order dismissing those claims.

We find that petitioner has not shown the invocation of mandamus is justified under the factors enumerated in Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition for a writ of mandamus is hereby denied.

DECLARATION OF SERVICE BY MAIL

Re: Vasquez v. USDC, David L. Murtishaw No. _____

I, the undersigned, declare that I am over 18 years of age, and not a party to the within cause; my business address is P.O. Box 944255, Sacramento, California, 94244-2550. I served a true copy of the attached

PETITION FOR WRIT OF CERTIORARI

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

David H. Schwartz
Michael P. Guta
240 Stockton St., Ste. 300
San Francisco, CA 94108

United States Court of Appeal
for the Ninth Circuit
Cathy Catteron, Clerk
121 Spear Street
P.O. Box 193939
San Francisco, CA 94119-9393

United States District Court
Eastern District of California
Jack L. Wagner, Clerk
U.S. Courthouse
650 Capitol Mall
Sacramento, CA 95814

Drew S. Days, III
Solicitor General
Department of Justice
Room 5614
Washington, D.C. 20530

Each said envelope was then, on July 16, 1993, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 1993, at Sacramento, California.

_____
DECLARANT